IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
JUNE 26, 2007 Session

KAREN MAE DANIEL v. COY ELZIE DANIEL

Direct Appeal from the Chancery Court for Wayne County
No. 11592 Jim T. Hamilton, Chancellor

No. M2006-01579-COA-R3-CV - Filed October 31, 2007

The plaintiff wife and the defendant husband were married in 1984, and they had four children during the marriage. In February of 2005, the wife sued the husband for divorce, alleging inappropriate marital conduct and irreconcilable differences. A trial was held in June of 2006, after which the trial court adopted the wife's proposed division of marital property and awarded the wife $10,000, representing a portion of her attorney's fees. The division of property included an award to the wife of a house bought by the husband prior to marriage, a reimbursement to the wife for one-half of the expenditures she incurred repairing and furnishing the house during the proceedings, and a one-half interest in a certificate of deposit held jointly by the parties containing a worker's compensation settlement obtained by the husband during the marriage. On appeal, we affirm.

Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Chancery Court Affirmed

ALAN E. HIGHERS, J., delivered the opinion of the court, in which DAVID R. FARMER, J., and WALTER C. KURTZ, SP. J., joined.

W. Andrew Yarbrough, Waynesboro, TN, for Appellant

Paul A. Bates, Lawrenceburg, TN, for Appellee

OPINION

I. Factual Background & Procedural History

This appeal involves a divorce and subsequent court order distributing marital property. The parties involved, Karen Daniel ("Wife" or "Appellee") and Coy Daniel ("Husband" or "Appellant"), were married in 1984. The parties had three sons and adopted a daughter, and two of the children were minors living with Wife at the time of the divorce. Husband has worked as a machinist throughout the marriage. Wife graduated from nursing school in 1985, but for the first eight years of marriage, she did not work outside of the home. During these eight years, Wife prepared all of the family's meals and performed most of the household chores. Around 1992, Wife began working as a registered nurse in a private home, and she is employed in this capacity at the present time.

Eight years prior to the marriage, in 1976, Husband had purchased a house and real property located on Dickson Street in Collinwood, Tennessee ("the Dickson property"), for between $14,000 and $15,000, to which he received title in his name. The parties resided at the Dickson Street property for approximately three years prior to their marriage, and they continued to live at the property for approximately four years after their marriage. In 1987, the parties moved out of the Dickson Street property and into another house in Iron City, Tennessee, but they rented the Dickson Street property out to tenants until 2001. During the course of the marriage, both parties performed painting and maintenance on the Dickson Street property. Rent generated from the Dickson Street property was deposited into a joint bank account held by the parties, and these proceeds were used to pay the mortgage, insurance, and taxes on the property. The mortgage on the Dickson Street property was paid off in the late 1980's or early 1990's. In 2001, Husband was injured in an

employment-related accident, and in 2003 he received a workers' compensation settlement in the amount of $69,720, which was placed in a certificate of deposit held jointly by the parties.

On February 18, 2005, Wife filed a complaint for divorce in the Wayne County Chancery Court, alleging the grounds of inappropriate martial conduct and irreconcilable differences, asking to be named primary residential parent of the parties' minor children, seeking reasonable child support and an equitable distribution of marital property, and requesting a reasonable award of attorney's fees. A temporary mutual injunction was entered that same day pursuant to Tenn. Code Ann. § 36-4-106(d), enjoining each party from taking certain actions affecting marital property until the final divorce decree was entered, and from harassing, threatening, assaulting, or abusing the other party, *inter alia*. Husband filed an answer on March 7, 2005. At some point after being served with the complaint and injunction, Husband withdrew $16,858.59, $2,500 and $14,000 respectively from the parties' joint bank accounts and deposited these amounts into accounts in his own name.[1] Husband also removed Wife's name from the certificate of deposit containing the worker's compensation settlement, and replaced it with the names of two of the children. On March 10, Wife filed a petition for an order of protection from Husband, in response to an episode occurring on March 9, in which Husband had allegedly approached her car, called her a "bitch," and choked her. An *ex parte* order of protection was issued against Husband on March 11. Husband was charged with domestic assault, and the criminal case was placed on diversion with the proceedings to be

[1] On May 20, 2005, an agreed order was entered by which $14,000 from the joint checking account was divided equally between the parties as marital property. Another agreed order was entered on July 26, in which the trial court found that Husband's withdrawal of $2,500 from a joint savings account and $6,500 from another savings account would be considered a distribution of marital assets, and ordered that Wife be awarded the balance of the joint savings account, which was found to be $7,396.15.

deferred for one year, with the condition that Husband attend an eight-week domestic violence class.

A *pendente lite* hearing was held before the trial court on March 17, 2005. On May 13, 2005, the court entered an order finding that counsel for the parties had announced a settlement that the court found fair and equitable, and adequately provided for the support and maintenance of the parties' minor children. The order incorporated a temporary parenting plan in which Wife was designated the primary residential parent of the minor children. The court ordered that the order of protection be reinstated, that Wife and the minor children be awarded temporary use and possession of the Dickson property, and that Husband be awarded temporary use of the house located in Iron City. The order also provided:

> IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Karen Mae Daniel will keep a record of expenses concerning the renovation of the home at 110 [Dickson] Street, Collinwood, Tennessee, up to $6,500.00 which documentation will be provided to counsel for the defendant. In the event expenditures are expected to exceed $6,500.00, the Court will conduct an additional hearing, if necessary. In addition, the Court will consider said expenditures in the equitable distribution of the marital estate at the time of the trial of this cause.

On October 3, 2005, Husband's attorney filed a motion to withdraw as counsel, which was granted by the trial court on November 1. Husband filed a handwritten motion for a continuance of the divorce trial, which had originally been set for January 18, 2006, in order to retain another attorney, and this request was granted by the trial court. By agreed order, the date for trial was reset to April 28, 2006. On April 3, Husband's second attorney filed a motion for withdrawal as counsel, and a motion for another continuance of trial, citing his and Husband's inability to agree on how the case should be handled. The trial court once again permitted Husband's counsel to withdraw, and entered an order setting trial of the divorce for June 5, 2006.

Husband retained another attorney, and a divorce trial was held on June 5, 2006. During her examination at trial, Wife's proposed division of marital assets and liabilities was admitted into evidence by the trial court. Husband also provided testimony, but did not seek to admit a proposal as to property division. On June 20, 2006, the trial court entered an order in which it granted Wife an absolute divorce based upon inappropriate marital conduct by Husband. In the order, the trial court specifically found that Husband had not been a credible witness, and conversely, that Wife had been a credible witness. The court awarded Wife partial attorney's fees of $10,000 due to "duplication of services" by Mother's attorney resulting from Husband's changing counsel and twice requesting continuances of the trial. The trial court incorporated Wife's proposed division of property in the order, which among other things, awarded her the Dickson property outright, awarded her one half of the equity in the Iron City house and other parcels of real property owned by the parties, and awarded her a one-half interest in the certificate of deposit containing the workers'

compensation settlement proceeds.[2] Additionally, Wife was awarded reimbursement for one half of her expenditures incurred for repairs, appliances, and furniture for the Dickson property.

II. ISSUES PRESENTED

Appellant has timely filed his notice of appeal and presents the following issues for review, as we perceive them:

1. Whether the trial court erred in classifying the Dickson Street property as marital property, and in awarding the property to Ms. Daniel as part of its distribution of the marital estate.
2. Whether the trial court erred in classifying the certificate of deposit containing the workers' compensation settlement as marital property and ordering its equitable distribution between the parties.
3. Whether the trial court erred in requiring Mr. Daniel to reimburse Ms. Daniel one-half of her expenditures for repairs, furniture, and appliances for the Dickson Street property.
4. Whether the trial court erred in awarding Wife attorney's fees in the amount of $10,000.

[2] The present balance of the certificate of deposit, after its accrual of interest, was determined to be $73,864.54, resulting in an award to each party of $36,932.27.

Finding no reversible error by the trial court, we affirm.

III. STANDARD OF REVIEW

In a non-jury trial, we review a trial court's findings of fact *de novo* upon the record of the trial court, accompanied by a presumption of correctness of the finding, unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d) (2006). For the evidence to preponderate against a trial court's finding of fact, it must support another finding of fact with greater effect. ***Realty Shop v. RR Westminster Holding, Inc.***, 7 S.W.3d 581, 596 (Tenn. Ct. App. 1999). If the trial court has not made a specific finding of fact on a particular matter, we will review the record to determine where the preponderance of the evidence lies without employing a presumption of correctness. ***Cumberland Bank v. G & S Implement Co.***, 211 S.W.3d 223, 228 (Tenn. Ct. App. 2006). The conclusions of a trial court on issues of law are reviewed *de novo* with no presumption of correctness. ***Jordan v. Knox Co.***, 213 S.W.3d 751, 763 (Tenn. 2007).

With regard to the credibility determinations of a trial court, we employ the following standard, as held by the Tennessee Supreme Court:

> Unlike appellate courts, trial courts are able to observe witnesses as they testify and to assess their demeanor, which best situates trial judges to evaluate witness credibility. *See* ***State v. Pruett***, 788 S.W.2d 559, 561 (Tenn. 1990); ***Bowman v. Bowman***, 836 S.W.2d 563, 566

> (Tenn. Ct. App. 1991). Thus, trial courts are in the most favorable position to resolve factual disputes hinging on credibility determinations. *See* ***Tenn-Tex Properties v. Brownell-Electro, Inc.***, 778 S.W.2d 423, 425-26 (Tenn. 1989); ***Mitchell v. Archibald***, 971 S.W.2d 25, 29 (Tenn. Ct. App. 1998). Accordingly, appellate courts will not re-evaluate a trial judge's assessment of witness credibility absent clear and convincing evidence to the contrary. *See* ***Humphrey v. David Witherspoon, Inc.***, 734 S.W.2d 315, 315-16 (Tenn. 1987); ***Bingham v. Dyersburg Fabrics. Co., Inc.***, 567 S.W.2d 169, 170 (Tenn. 1978).

Wells v. Tenn. Bd. of Regents, 9 S.W.3d 779, 783 (Tenn. 1999).

IV. DISCUSSION

A. Award to Ms. Daniel of the Dickson Property

Mr. Daniel asserts that the trial court erred in classifying the Dickson Street property as marital property, and in awarding Ms. Daniel said property in its order on property division. Mr. Daniel notes that he purchased the property in 1976, and that he lived in the house located on the property for eight years prior to the marriage of the parties in 1984. Mr. Daniel contends that the Dickson Street property was his separate property, and that the property was never treated in a way

as to evince an intention that it would become marital property. Conversely, Ms. Daniel urges us to affirm the trial court's classification of this property as part of the marital estate, under the theory of transmutation. She contends that, although the Dickson Street property may have at one time been considered Mr. Daniel's separate property, by the time the parties divorced, it had become marital property.

Tennessee is a "dual property" jurisdiction because its divorce statutes draw a distinction between marital and separate property. ***Batson v. Batson***, 769 S.W.2d 849, 856 (Tenn. Ct. App. 1988). Since Tenn. Code Ann. § 36-4-121(a) provides only for the division of marital property, proper classification of a couple's property is essential. ***Id.*** Thus, as a first order of business, it is incumbent on the trial court to classify the property, to give each party their separate property, and then to divide the marital property equitably. ***Id.*** Property classification is a question of fact. ***Dalton v. Dalton***, No. W2006-00118-COA-R3-CV, 2006 Tenn. App. LEXIS 819, at *15 (Dec. 28, 2006) (citing ***Bilyeu v. Bilyeu***, 196 S.W.3d 131, 135 (Tenn. Ct. App. 2005)).

Property cannot be included in the marital estate unless it fits within the definition of "marital property" in Tenn. Code Ann. § 36-4-121(b)(1)(A). ***Fox v. Fox***, No. M2004-02616-COA-R3-CV, 2006 Tenn. App. LEXIS 591, at *7 (Tenn. Ct. App. Sept. 1, 2006). By the same token, "separate property," as defined by statute, should not be included in the marital estate. ***Id.*** "Marital property" is defined as:

> all real and personal property, both tangible and intangible, acquired by either or both spouses during the course of the marriage up to the date of the final divorce hearing and owned by either or both spouses as of the date of filing of a complaint for divorce, except in the case of fraudulent conveyance in anticipation of filing, and including any property to which a right was acquired up to the date of the final divorce hearing, and valued as of a date as near as reasonably possible to the final divorce hearing date.

Tenn. Code Ann. § 36-4-121(b)(1)(A) (2005). Marital property also "includes income from, and any increase in value during the marriage of, property determined to be separate property in accordance with subdivision (b)(2) if each party substantially contributed to its preservation and appreciation . . . ." Tenn. Code Ann. § 36-4-121(b)(1)(B) (2005); *see also* ***Batson***, 769 S.W.2d at 856; ***Ellis v. Ellis***, 748 S.W.2d 424, 426-27 (Tenn. 1988); ***Crews v. Crews***, 743 S.W.2d 182, 189 (Tenn. Ct. App. 1987). "'[S]ubstantial contribution' may include, but not be limited to, the direct or indirect contribution of a spouse as homemaker, wage earner, parent or family financial manager together with such other factors as the court having jurisdiction thereof may determine." Tenn. Code Ann. § 36-4-121(b)(1)(D) (2005).

"Separate property" is defined by statute as

> (A) All real and personal property owned by a spouse before marriage, including, but not limited to, assets held in individual retirement accounts (IRAs) as that term is defined in the Internal Revenue Code of 1986, as amended;
>
> (B) Property acquired in exchange for property acquired before the marriage;
>
> (C) Income from and appreciation of property owned by a spouse before marriage except when characterized as marital property under subdivision (b)(1);
>
> (D) Property acquired by a spouse at any time by gift, bequest, devise or descent;
>
> (E) Pain and suffering awards, victim of crime compensation awards, future medical expenses, and future lost wages; and
>
> (F) Property acquired by a spouse after an order of legal separation where the court has made a final disposition of property.

Tenn. Code Ann. § 36-4-121(b)(2) (2005).

The classification of all assets acquired by either spouse before the marriage begins with the presumption that the asset is separate. ***Fox***, 2006 Tenn. App. LEXIS 591, at *16. A party seeking to rebut this presumption has the burden of proving by a preponderance of the evidence that the asset acquired prior to the marriage has become marital, by presenting evidence of commingling or

transmutation. ***Id.*** (citing ***Langschmidt v. Langschmidt***, 81 S.W.3d 741, 747 (Tenn. 2002)). In *Hirschman v. Hirschman*, we expressed agreement with the following definitions of those terms:

> Separate property becomes marital property [by commingling] if inextricably mingled with marital property or with the separate property of the other spouse. If the separate property continues to be segregated or can be traced into its product, commingling does not occur…. [Transmutation] occurs when separate property is treated in such a way as to give evidence of an intention that it become marital property… The rationale underlying these doctrines is that dealing with property in these ways creates a rebuttable presumption of a gift to the marital estate. This presumption is based also upon the provision in many marital property statutes that property acquired during the marriage is presumed to be marital. The presumption can be rebutted by evidence of circumstances or communications clearly indicating an intent that the property remain separate.

Hirschman v. Hirschman, No. W2003-00008-COA-R3-CV, 2003 Tenn. App. LEXIS 871, at *14-15 (Tenn. Ct. App. Dec. 10, 2003) (citing 2 Homer H. Clark, *The Law of Domestic Relations in the United States* § 16.2 at 185 (2d ed. 1987); ***Lewis v. Frances***, No. M1998-00946-COA-R3-CV, 2001 WL 219662, at *8, 2001 Tenn. App. LEXIS 140, at *24-25 (Tenn. Ct. App. Mar. 7, 2001), *perm. app. denied* (Tenn. Oct. 8, 2001); ***Sartain v. Sartain***, No. 03A01-9707-CH-00297, 1998 WL

751462, at *4, 1998 Tenn. App. LEXIS 722, at *9 (Tenn. Ct. App. Oct. 29, 1998); ***Hofer v. Hofer***, No. 02A01-9510-CH-00210, 1997 WL 39503, at *3-4, 1997 Tenn. App. LEXIS 74, at *8 (Tenn. Ct. App. Feb. 3, 1997); ***Pope v. Pope***, No. 88-58-II, 1988 WL 74615, at *3, 1988 Tenn. App. LEXIS 449, at *7-8 (Tenn. Ct. App. July 20, 1988)). Furthermore, as to transmutation, we have recognized:

> Four of the most common factors courts use to determine whether real property has been transmuted from separate property to marital property are: (1) the use of the property as a marital residence; (2) the ongoing maintenance and management of the property by both parties; (3) placing the title to the property in joint ownership; and (4) using the credit of the non-owner spouse to improve the property.

Fox, 2006 Tenn. App. LEXIS 591, at *18-19 (citing 3 John Tingely & Nicholas B. Svalina, *Marital Property Law*, § 43:11, at 43-119 to -122 (rev. 2d ed. 2006)). In the final analysis, whether a particular asset is marital or separate depends on the conduct of the parties, not the record title of the asset. ***Id.*** at *18. An asset separately owned by one spouse will be classified as marital property if the parties themselves treated it as marital property. ***Id.***

Although, in this case, the trial court did not explicitly state a finding that the Dickson property was to be classified as marital property, this does not hinder our analysis of this issue on appeal. In cases tried without a jury, this Court may properly classify the parties' property interests when the trial court has failed to do so and when the record contains sufficient evidence to enable

us to do so. ***Fox***, 2006 Tenn. App. LEXIS 591**,** at *13. The record in this case enables us to determine that Wife offered sufficient evidence to rebut the presumption that the Dickson property was separate property, as the evidence preponderates in favor of a finding that the house became marital property during the marriage through transmutation. It is undisputed that the property was the parties' marital residence during the first four years of their marriage. Testimony of both parties at trial indicated that both Wife and Husband performed painting of the interior and exterior of the Dickson property on at least two occasions during the period that it was being rented out to tenants. The mortgage, insurance, and taxes on the Dickson property were paid with the rental proceeds that had been deposited into a joint bank account held by the parties. At trial, Husband offered no evidence of any written or oral understanding between the parties regarding the ownership of the property. As was found to be the case with a factually similar scenario involving one of the houses of the parties in ***Fox***, 2006 Tenn. App. LEXIS 591, at *22-23, we believe the evidence preponderates in favor of a finding that the Daniels intended to treat the Dickson property as marital property, and that it should be considered as such.

Having found the Dickson property to be marital property, we now turn to the trial court's award of the house to Wife in its equitable distribution of the marital estate. Tenn. Code Ann. § 36-4-121(c) (2005) provides a list of relevant factors for a trial court to consider in making an equitable distribution of marital property:

> (c) In making equitable division of marital property, the court shall consider all relevant factors including:

(1) The duration of the marriage;

(2) The age, physical and mental health, vocational skills, employability, earning capacity, estate, financial liabilities and financial needs of each of the parties;

(3) The tangible or intangible contribution by one (1) party to the education, training or increased earning power of the other party;

(4) The relative ability of each party for future acquisitions of capital assets and income;

(5) The contribution of each party to the acquisition, preservation, appreciation, depreciation or dissipation of the marital or separate property, including the contribution of a party to the marriage as homemaker, wage earner or parent, with the contribution of a party as homemaker or wage earner to be given the same weight if each party has fulfilled its role;

(6) The value of the separate property of each party;

(7) The estate of each party at the time of the marriage;

(8) The economic circumstances of each party at the time the division of property is to become effective;

(9) The tax consequences to each party, costs associated with the reasonably foreseeable sale of the asset, and other reasonably foreseeable expenses associated with the asset;

> (10) The amount of social security benefits available to each spouse; and
>
> (11) Such other factors as are necessary to consider the equities between the parties.

Regarding appellate review of a trial court's division of marital property, this Court has held:

> Tenn. Code Ann. § 36-4-121(a) provides that marital property should be divided equitably without regard to fault. It gives a trial court wide discretion in adjusting and adjudicating the parties' rights and interests in all jointly owned property. ***Fisher v. Fisher***, 648 S.W.2d 244, 246 (Tenn. 1983). Accordingly, a trial court's division of the marital estate is entitled to great weight on appeal, ***Edwards v. Edwards***, 501 S.W.2d 283, 288 (Tenn. Ct. App. 1973), and should be presumed to be proper unless the evidence preponderates otherwise. ***Lancaster v. Lancaster***, 671 S.W.2d 501, 502 (Tenn. Ct. App. 1984); ***Hardin v. Hardin***, 689 S.W.2d 152, 154 (Tenn. Ct. App. 1983).

Batson, 769 S.W.2d at 859. Dividing a marital estate is not a mechanical process; the goal is to fashion an equitable remedy by considering the factors set forth in Tenn. Code Ann. § 36-4-121(c). ***Kinard v. Kinard***, 986 S.W.2d 220, 230 (Tenn. Ct. App. 1998). A division of marital property is not rendered inequitable merely because it is not precisely equal, or because each party did not receive a share of every piece of marital property. ***Id.***.

The trial court adopted Wife's proposed division of property in its final order, and Husband offered no such proposal for the court's consideration. The values of the numerous marital assets contained within Wife's proposal were incorporated into the court's final order and division of property. The evidence supports a finding that the fair market value of the Dickson Street property was $40,200. Wife was awarded the Dickson property outright. Husband was awarded the Iron City house and lot, and each party was awarded one-half of the overall equity for this property, which was valued at $126,400. In the final division of property, which also included several other parcels of real property, numerous bank accounts, and retirement accounts, Wife was awarded assets worth a total of $297,279.22. Husband's share of the marital estate totaled $314,012.27. We find no error with the trial court's award to Wife of the Dickson property as part of its equitable distribution of the marital estate.

B. Distribution of Workers' Compensation Settlement Proceeds

"'Marital property' includes recovery in . . . workers' compensation . . . and other similar actions for the following: wages lost during the marriage, reimbursement for medical bills incurred and paid with marital property, and property damage to marital property. Tenn. Code Ann. § 36-4-121(b)(1)(C) (2005). "The purpose of workers' compensation payments is to provide insured workers with periodic payments, which are a substitute for regular wages." ***Dudley v. Dudley***, No. M1998-00982-COA-R3-CV, 2000 Tenn. App. LEXIS 659, at *9 (Tenn. Ct. App. Sept. 28, 2000) (citing ***Bailey v. Colonial Freight Sys., Inc.***, 836 S.W.2d 554, 557 (Tenn. 1992); ***Burris v. Cross***

Mountain Coal Co., 798 S.W.2d 746, 750 (Tenn. 1990)). "Because workers' compensation payments, whether lump sum or periodic, are also income replacement, they should also be treated as income." ***Id.***

The order approving Husband's workers' compensation settlement, which was admitted as a trial exhibit, was entered by the Lawrence County Chancery Court on May 13, 2003. The order stated that Husband's injury occurred on December 22, 2001. The order further recognized that the settlement represented "120 weeks, 30% permanent partial impairment and disability to the body as a whole." In the instant case, both parties testified that Husband received the $69,720 workers' compensation settlement during the parties' marriage, and that the proceeds were deposited into a joint bank account held by the parties. There is a presumption, derived from Tenn. Code Ann. § 36-4-121(b)(1)(A), that all assets acquired by either spouse during the marriage are marital property. ***Fox***, 2006 Tenn. App. LEXIS 591, at *14. Husband has provided no evidence that the workers' compensation settlement should not be considered marital property. On appeal, Husband argues only that he did not intend for any of the settlement proceeds to become part of the marital estate, that none of the settlement proceeds were utilized during the marriage to make any purchases, and that none of the proceeds were used to purchase any jointly owned property. We find this argument unpersuasive, and we affirm the trial court's equal division of the certificate of deposit containing the workers' compensation settlement, which we have determined was equitable.

C. Award to Ms. Daniel of One Half of the Expenditures on the Dickson Property

Husband also challenges the trial court's order requiring him to reimburse Wife for one-half of her expenditures on repairs, furniture, and appliances at the Dickson Street property. Wife's proposed division of property valued these expenditures at $7,000, resulting in reimbursement by Husband of $3,500. Husband relies on ***King v. King***, 986 S.W.2d 216, 219 (Tenn. Ct. App. 1998), for its recognition that "[m]arital debts should, where possible, follow their associated assets . . . and should be apportioned by considering the reason for the debt, the party who benefitted from the debt, and the party better able to assume the debt." Husband contends generally that Wife failed to satisfy her burden of proof regarding the extent of these expenditures, presumably because the record contains no receipts of these expenses.

The trial court entered an order on May 13, 2005, in which it found that the parties had agreed that Wife and the minor children would be allowed temporary use of the Dickson Street property, and that she would keep a record of expenses up to $6,500 on expenditures on the property, and provide such documentation to Husband. The order further provided that these expenditures would be considered in the equitable division of marital property. At trial, Wife testified regarding her expenses as follows:

> Q. What did your renovation consist of?
>
> A. I had to do painting. The flooring needed to be replaced.
>
> Q. Speak up for me.
>
> A. I'm sorry. Flooring needed to have carpeting put in, the bathroom was completely – well, the toilet and the sink was

[sic] in the living room, so it had to be completely reinstalled. And once we had all the renovation in the home done and turned the water on, all the pipes were damaged and we had to replace the pipes in there to turn the water on.

Q. If I recall correctly from that order, and again it does speak for itself, I believe there was contemplation by everyone that it was going to be about $6,500; does that sound about right?

A. Yes, sir.

Q. Did they run that more or less?

A. Well it ran a little bit more than that. I also had to get furniture and appliances with that.

. . .

Q. How did you furnish the [Dickson Street property]?

A. I got a no interest, one year no interest loan from Story and Lee. I went there and bought all my furniture and appliances there.

Q. Earlier you said that there was no debt that you're aware of. Does that mean that note has been paid?

A. Yes, sir, it's paid.

We find Husband's argument on this issue to be without merit. As to the value of the expenditures, we believe that Husband failed to preserve any alleged error at trial, and that this issue

has therefore been waived on appeal. Husband did not object to the admission of Wife's proposed division of property, which contained a valuation of the expenditures at $7,000. The record indicates that the parties agreed that these expenditures would be considered in the trial court's equitable distribution of marital property. Husband failed to provide any proof as to his own valuation of such expenditures. "It is a well known and well accepted rule that a party must complain and seek relief immediately after the occurrence of a prejudicial event and may not silently preserve the event as an 'ace in the hole' to be used in event of an adverse decision." ***Gotwald v. Gotwald***, 768 S.W.2d 689, 694 (Tenn. Ct. App. 1988) (citing ***Spain v. Connolly***, Tenn. App. 1980, 606 S.W.2d 540 (Tenn. Ct. App. 1980)).

Furthermore, we find *King* inapplicable on these facts. Wife's expenditures did not solely benefit her, but were clearly intended to provide the family with a habitable residence. Given the undisputed testimony of the Dickson property's condition prior to these expenditures, and the fact that Husband was allowed to keep a majority of the parties' furniture at the house in Iron City, Wife could not reasonably have been expected to reside at the Dickson property with the minor children without certain amenities and expenses. Furthermore, the evidence does not preponderate in support of a finding that Wife was in a better financial position than Husband to assume these expenses. Accordingly, we affirm the trial court's order on division of property requiring Husband to reimburse Wife $3,500 for one half of these expenditures.

D. Award to Ms. Daniel of Partial Attorney's Fees

Finally, Husband alleges error with the trial court's award of $10,000 as part of Wife's legal expenses throughout the divorce proceedings. A trial court has the authority to make an additional award to an innocent spouse to defray the legal expenses resulting from the divorce. ***Smith Beaty v. Beaty***, No. 03A01-9209-CH-00364, 1993 Tenn. App. LEXIS 234 (Tenn. Ct. App. Mar. 25, 1993) (quoting ***Luna v. Luna***, 718 S.W.2d 673, 676 (Tenn.App. 1986)). The allowance of attorney's fees is largely within the discretion of the trial court, and we will not interfere except upon a clear showing of abuse of that discretion. ***Smith v. Smith***, 984 S.W.2d 606, 610 (Tenn. Ct. App. 1997). This Court has repeatedly held that an award of attorney's fees in a divorce case is treated as spousal support and should be characterized as alimony *in solido*. ***Disher v. Disher***, No. W2002-01421-COA-R3-CV, 2003 Tenn. App. LEXIS 917, at *15 (Tenn. Ct. App. Dec. 22, 2003) (citing ***Wilder v. Wilder***, 66 S.W.3d 892, 894 (Tenn. Ct. App. 2001)). In *Disher*, we stated:

> With attorney's fees being a form of alimony, courts must balance the factors given in section 36-5-101(d)(1) of the Tennessee Code, as stated above, in determining a proper award. Again, the cornerstones in balancing the factors are the real need of the requesting spouse and the ability of the obligor spouse to pay. ***Aaron,*** 909 S.W.2d at 410. Although the relative fault of the parties is to be considered, awards should not be punitive in nature. ***Anderton,*** 988 S.W.2d at 682. Instead, the true purpose should be to "aid the disadvantaged spouse to become and remain self-sufficient and . . . to mitigate the harsh

> economic realities of divorce." ***Id.*** (citing ***Shackleford v. Shackleford***, 611 S.W.2d 598, 601 (Tenn. Ct. App. 1980)).

Id. at *15-16.

Wife's attorney submitted an affidavit in which he stated that the total time expended on the litigation amounted to 120.25 hours, billable at his customary hourly rate of $175, through May 31, 2006, and he stated that this did not reflect any of his services provided during the divorce trial on June 5, 2006. This results in fees totaling approximately $21,043. As the evidence supports the trial court's finding that Husband's repeated continuances of trial resulted in duplication of services by Wife's attorney, and in further balancing of the factors to be considered by a trial court when awarding alimony *in solido*, we find no abuse of discretion by the trial court in awarding Wife $10,000 for part of her attorney's fees incurred below.

V. CONCLUSION

For the foregoing reasons, the judgment of the trial court is affirmed. Costs are assessed against Appellant, Coy Daniel, and his surety, for which execution may issue, if necessary.

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ALAN E. HIGHERS, JUDGE